

#### Members

Sen. Marvin Riegsecker, Chairperson  
Sen. Becky Skillman  
Sen. Rose Antich-Carr  
Sen. Timothy Skinner  
Rep. Peggy Welch, Vice-Chairperson  
Rep. Tiny Adams  
Rep. Thomas Saunders  
Rep. Matthew Whetstone  
Rep. Alan Chowning  
Thomas Rethlake  
Oatess Archey  
Vern Jewell  
Doug Lechner  
Raymond Lueken  
Garland Ferrell  
Kelly Thompson



# COUNTY GOVERNMENT STUDY COMMISSION

*Legislative Services Agency*  
200 West Washington Street, Suite 301  
Indianapolis, Indiana 46204-2789  
Tel: (317) 233-0696 Fax: (317) 232-2554

#### LSA Staff:

Robert Sigalow, Fiscal Analyst for the  
Commission, Ken Roney, Attorney for the  
Commission

Authority: P.L. 28-2001 (HEA 1629)

## MEETING MINUTES<sup>1</sup>

Meeting Date: July 31, 2003  
Meeting Time: 10:30 A.M.  
Meeting Place: State House, 200 W. Washington St.,  
Room 233  
Meeting City: Indianapolis, Indiana  
Meeting Number: 1

**Members Present:** Sen. Marvin Riegsecker, Chairperson; Sen. Becky Skillman; Sen. Rose Antich-Carr; Rep. Thomas Saunders; Rep. Matthew Whetstone; Garland Ferrell.

**Members Absent:** Sen. Timothy Skinner; Rep. Peggy Welch, Vice-Chairperson; Rep. Tiny Adams; Rep. Alan Chowning; Thomas Rethlake; Oatess Archey; Vern Jewell; Doug Lechner; Raymond Lueken; Kelly Thompson.

Senator Riegsecker, Chairman, called the first meeting of the County Government Study Commission for the 2003 interim to order at 10:49 AM. After an introduction of the members present, the Chairman announced that the Commission would hear testimony concerning septic system rules and pioneer cemeteries.

### **I. Septic System Rules**

Chairman Riegsecker called on the following individuals to testify on septic system issues.

#### Howard Cundiff, State Department of Health

Mr. Cundiff provided a background on the development of a new rule to replace the current

---

<sup>1</sup> Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

septic system rule. He said the new sewage rule proposal (410 IAC 6-8.2; LSA Document #02-321) had taken approximately four years to create. He mentioned the State Groundwater Protection Act as a reason for the adoption of the rules. He stated an additional reason is that the current rule is 10 to 15 years old. He also stated a preference for a single uniform rule to be established.

Mr. Cundiff indicated that the proposed rule was lengthy with technical details and that he would like to see the digest of the proposed rule separated from the technical details.

Mr. Cundiff mentioned that currently residential sewage permits are typically issued by the local county health department, while commercial permits are generally issued by the state with some local issue.

Mr. Cundiff stated that ten years ago, the Indiana Department of Environmental Management (IDEM) adopted federal drinking water standards for nitrates. He spoke on the causality of "Blue Baby" syndrome from excessive nitrates in drinking water, which is hazardous to babies under six months of age and to pregnant mothers. He stated the federal minimum standard is ten parts per million.

Mr. Cundiff also discussed different filtering measures and the additional expense for counties with particularly sandy ground to install and maintain filters in septic systems. The main counties he mentioned where additional expenses tend to apply are Elkhart, St. Joseph, and LaPorte. He stated a preference for recirculating media filters for treatment/removal of nitrates and improvement of effluent, although these filters are expensive.

Mr. Cundiff mentioned SEA 99-2002, which allows for septic maintenance districts (SMD). He discussed that septage disposal can overpower sewage plants and that SMDs can provide a mechanism to pay for a collection device for septage known as "trickling."

Mr. Cundiff fielded questions from Commission members.

Senator Gard questioned Mr. Cundiff on the use of federal guidelines for nitrates in other states. Mr. Cundiff responded that other states should have adopted similar guidelines to the ten parts per million standard.

#### Steve Boyce, Indiana Builders Association

Mr. Boyce stated his opposition to the proposed rule with concerns and recommendations for its improvement. He stated that the proposed rule was the third incarnation, and that previous attempts failed due to the lack of technology available to meet standards.

#### David Kovich, President, Indiana Builders Association

Mr. Boyce introduced Mr. David Kovich for additional testimony. Mr. Kovich gave a background on the 1990 septic rule currently in place. He stated the current rule works well when enforced. He said that those counties that enforce the rule properly have a fail rate of three percent. He said that, although honorable, the proposed rules would add undue financial strain to local government. He elaborated that current technology is not capable of meeting the proposed standards.

He added that county health offices would have to hire an additional staff member to help enforce the new rule. He stated the cost would be \$60,000 per new staff member.

He also stated that the per year cost to homeowners in the installation of new septic systems

complying with the new rule would be \$3.7 M in Elkhart County and \$42 M statewide. Mr. Kovich provided a cost analysis to the Commission (Exhibit A). He mentioned that 2% of nitrates in groundwater are from septic systems, although there would be additional cost per home for de-nitrification. He concluded that no other state has set their nitrate standards to the federal ten parts per million standard.

Sandra Flum, Allen County Commissioners Office

Ms. Flum provided a background of the Allen County MSD. She said the MSD went into effect on July 7. She stated that Allen County has very strict guidelines. She said that the district is two years into the process of monitoring maintenance for discharging systems.

Ms. Flum indicated that currently only new or improved systems are in the district. She said a fee ordinance is currently being adopted for annual inspections. She said the fees would be \$50 to \$150 depending on the system type.

She stated that unlike Elkhart, St. Joseph, and LaPorte Counties, Allen County has very dense soil.

She suggested regionalization of county health departments with regard to contracting with specialists to help enforce septic rules. She mentioned the soil study done in Allen County by Purdue University.

Dax Denton, Association of Indiana Counties

Mr. Denton distributed a letter from the Elkhart County Health Department regarding the proposed rule 410 IAC 6-8.2 (Exhibit B).

Mr. Denton stated the concerns of the Association regarding the fiscal impact counties would experience to hire additional staff to enforce septic rules. He said there would be additional costs to counties to hire professionals to measure septic levels. He said there is currently not enough money to implement changes required by the rule. He mentioned that Allen County Health Department officials have been discussing this issue.

Glenn Pratt, Sierra Club

Mr. Pratt testified that the lack of support by IDEM on septic issues is a major problem. He stated that there are about 30,000 failing systems in Marion County.

He said that MSDs should be mandated to be established by a set date. He suggested using population density statistics to determine a timetable as to when counties would be required to establish an MSD.

He also indicated that Allen County's district only covers septic systems that have not failed.

He said that seed money would be useful in establishing septic districts. He indicated that the system adopted must be easy to comply with. He mentioned that there are three main components to the problem: sewers, failing septic systems, and urban runoff. He opined that failing septic systems are more crucial than urban runoff. He stated more kids are likely to play in nearby creeks and streams that may have leaking septic systems than play in the White River where sewage and urban runoff problems are prevalent.

Mr. Pratt suggested combining all three problems in an integrated approach. He said failing septic systems are a much more urban problem, and not combining them with sewage and

urban runoff into a single solution would be wasteful of resources.

Ellen Holland, Indiana Association of Realtors

Ms. Holland distributed a document to Commission members (Exhibit C) and referred to the document to describe the added cost to new homes to comply with the proposed septic rule. She stated that the average homeowner would have to earn an additional \$1.50 per hour in order to qualify for a loan to build the same house under the current septic rule.

Senator Riegsecker observed that an operating septic system and safe water is a benefit to homeowners. Ms. Holland replied that there is insufficient evidence at the local level that the proposed rules are required.

James Keller, Indiana Manufactured Housing Association

Mr. Keller stated the Association's opposition to the proposed rule. He said the proposed rule would have a major impact on the ability of consumers to afford new homes. He stated that the proposed rule has problems, and he said the lack of written standards would make it difficult to enforce. He opined that given the required size of septic systems under the proposed rule and the difference in definition between "sleeping room" and "bedroom", new homes would require additional bedrooms in order to comply.

Trevor Vance, Indiana Statewide Association of Rural Electric Cooperatives

Mr. Vance testified that he was concerned with the cost of the proposed rule. He stated a cost figure of \$20 M to \$42 M per year that would hamper rural economic development. He suggested that a better rule be written.

The Chair asked Mr. Cundiff if there were any comments he would like to make in response to the testimony of the other witnesses. Mr. Cundiff stated he did not hear anything that required his response and declined further comment.

Chairman Riegsecker said the septic issue would be discussed further in future meetings of the Commission. He asked the members of the Commission how they would like to proceed with the issue.

Senator Antich-Carr commented that the issue could require more than one additional meeting. She said more information needs to be gathered by Commission members, and that talking with local officials would be beneficial to the process.

## **II. Pioneer Cemeteries.**

Chairman Riegsecker called on the following individuals to testify on pioneer cemetery issues.

Angela Tielking, Henry County Cemetery Commission

Ms. Tielking distributed photographs of cemeteries and two handouts (Exhibit D & E) to Commission members. She listed proposed changes to the Indiana Code. (Please refer to Exhibit D & E.)

Ms. Tielking said cemeteries require these additional protections:

1. County commissioners should be required to appoint a county cemetery commission that then has the legal authority to maintain cemeteries.

2. Problems exist with landlocked cemeteries. Easements for visitation are needed.
3. Cemeteries on private property create access and preservation problems.
4. Prairie grass restoration and controlled burning of weeds and grasses should not be performed in cemeteries due to the damage that results.

Senator Riegsecker inquired what constitutes a cemetery and was told that one grave sufficed. He then asked if property tax exemptions of cemeteries might be helpful. Ms. Tielking replied yes.

Debbie Driskell, Delaware Township of Hamilton County, President, Indiana Township Association

Ms. Driskell testified on the cooperative effort between the Association and the Department of Natural Resources (DNR) to provide education to township trustees on pioneer graves.

She also observed that improved access and greater enforcement powers would be of help.

John Walters, Fayette County, Grave Restorer

Mr. Walters informed the Commission that tombs of historical importance are in horrible condition throughout the state and that much work is needed. He shared some of his personal experience of restoring tombstones and other artifacts of grave sites.

Senator Riegsecker asked if this was a responsibility for the township trustees. Mr. Walters replied yes, and it was also a responsibility for families of the deceased.

Representative Saunders observed that he had been able to view several restored cemeteries and applauded the work of the restorers.

Donna Tauber, Henry County Cemetery Commission

Ms. Tauber testified to the importance of maintaining pioneer graves, particularly for genealogical purposes. She showed the Commission members a photo album of her family and the cemetery where some of her ancestors are buried.

Dan Mathis, Legislative Liaison, Department of Natural Resources

Mr. Mathis said the DNR is in process of compiling an inventory of all cemeteries across the state. He indicated that some burns are performed on cemeteries and that preservation of natural prairie grass is important to consider. He said that controlled burns do less damage to prairie grass than the use of mowers and weed whackers.

He also said that some of these cemeteries are on state property. He said that it was important to note that in one case the passage to a cemetery is very close to a shooting range. He stressed that before visitors venture down to this particular cemetery, they should contact Larry Alsop.

Representative Saunders asked Mr. Mathis if the DNR maintained cemeteries on DNR property. Mr. Mathis said that it depended on the history and location of the property. Representative Saunders asked if there were cemeteries on DNR property that looked like the photos presented earlier by Ms. Tielking. With approval of the Chairman, Mr. Mathis introduced Mr. Burnell Fischer, State Forester, to answer these questions. Mr. Fischer stated that there are cemeteries that are similar to the one in Ms. Tielking's photograph. He said the photograph exhibited an extreme case. He also stated that some cemeteries are surrounded by state

property, where the township owns the actual plot of land where the cemetery lies. He stated that in these cases, the state does not maintain the cemeteries, but the township may maintain them.

Mr. Mathis also introduced John Bacone to testify. Mr. Bacone fielded questions from Mr. Ferrell and Representative Saunders concerning the DNR's prairie grass restoration projects. Mr. Bacone also provided a limited background on the existence of prairie grass in Indiana before agricultural pursuits began.

Jeannie Regan-Dinius, Division of Historical Preservation and Archeology, DNR

Ms. Regan-Dinius was called by Senator Riegsecker to testify. She stated that a tax credit for these cemeteries is allowed under current law, but that no one has claimed it.

The Chairman noted that much historical information can be gained from the pioneer cemeteries.

Matt Brooks, Executive Director, Association of Indiana Counties

Mr. Brooks testified that the Association's historical position is to fight to insure home rule on matters such as the cemetery issue. He recapped the effort to improve capacity to meet the responsibility under the current law. He stated there could be a better avenue to accomplish maintenance on cemeteries than to simply mandate to local officials by changing a "may" provision to a "shall."

He stated that there are fiscal impacts to this issue. He asked the Commission to consider a solution that would be better tailored to individual counties' fiscal abilities. He mentioned the possibility of assessing a levy at \$0.50 per \$100 of assessed valuation (AV) to cover the costs involved with maintenance of pioneer graves.

Mr. Brooks also discussed property rights of those owning property around these cemeteries and rights to access. He asked if counties are to take responsibility to allow access to the cemeteries or would it be the homeowner's responsibility.

Ulysses "Bud" Bush, Indiana Pioneer Cemeteries Restoration Project, New Castle, Indiana

Mr. Bush raised the question of who owns cemeteries on church land. He expressed the problem of township trustees not being able to take over cemeteries on church land without deeds. He asked the Commission what could be done to have a deed created to present to the trustee.

Chairman Riegsecker recognized Ms. Tielking to further speak on the issue. She pointed out the differences between the roles of trustees and county cemetery commissions. She said trustees have several different responsibilities and that some may be indifferent to cemetery issues. She said the county cemetery commissions are designed to focus on the issue and care deeply about their condition.

Upon asking for further testimony and receiving none, Chairman Riegsecker set the next meeting date of the Commission for September 3, 2003. He expressed the Commission's desire to acquire more background information on the issues that were discussed and said the same issues would be discussed at the next meeting.

The meeting was adjourned at 12:51 PM.